

COX NEWSPAPERS

A DIVISION OF COX ENTERPRISES, INC.

1000 N. W. Peachtree Street
ATLANTA, GEORGIA 30334

7/15/91

COX NEWSPAPERS, INC.

7/15/91

July 15, 1991

BY HAND DELIVERY

Honorable Robert J. Durden, Chairman
Georgia Public Service Commission
244 Washington Street, S.W.
Atlanta, Georgia 30334

Re: Southern Bell proposed "Bill Processing Service"
tariff

Dear Mr. Chairman:

Cox Enterprises employs over 7,000 people in the State of Georgia in its corporate headquarters in Atlanta and in its various properties, including The Atlanta Journal and Constitution, WSB-TV and Radio and Cox Cable Middle Georgia, serving Macon and Warner Robbins. Cox Newspapers is a division of Cox and I serve as its Director of Information Services.

As I have testified to the Commission a number of times over the past two years, Cox provides a number of information services in Georgia that depend upon use of the Southern Bell local exchange network. These services, most of which are promoted in The Journal-Constitution, include 222-2000 (a business referral service), Score Phone, Entertainment Line, Weather Phone, Stock Phone, Classified Answering Machine, Career Talk, etc.

It has come to our attention that Southern Bell has proposed a voice messaging billing services tariff to the Georgia Public Service Commission which we understand will be considered by the Commission on Tuesday, July 16, 1991. The stated purpose of the tariff is to eliminate unfair billing service advantages that Southern Bell's own voice messaging service, Memory Call, enjoys over its voice messaging competitors.

Although the proposed tariff constitutes a step, albeit a small one, toward this end, we respectfully submit that it has significant shortcomings that deserve the Commission's attention. Because implementation of the tariff will assist voice messaging service providers, we do not urge that the tariff be rejected. However, we urge the Commission to review the tariff's scope and

Honorable Robert J. Durden
July 15, 1991
Page 2

costs and consider ordering modifications to the tariff in the near future.

Background

In its recent Memory Call Order, the Commission recognized Southern Bell's ability, incentive and practice of utilizing its monopoly control of the local network bottleneck to deny competitors features, functions and pricing of services on an equal basis. The Commission further recognized that because of this self-dealing Southern Bell's information service competitors receive unfair treatment when they utilize, or try to utilize, Southern Bell's monopoly services.

The Commission specifically recognized billing services as part of the problem. For example, the Commission noted that Southern Bell did nothing on its bills to differentiate its charges for Memory Call service from charges for basic telephone service. In addition, the Commission found that Southern Bell uses its monopoly billing service to promote (i.e., advertise and solicit) Memory Call. The Commission also determined that Southern Bell's deliberate refusal to provide billing services to voice messaging services other than its own Memory Call was abusive and anti-competitive.

It is no secret that Southern Bell filed this tariff in response to the Commission's findings and concerns. Although the tariff is a step in right direction, it is defective in a number of respects.

The Tariff Is Unreasonably Restrictive

While the proposed tariff would provide billing service for one segment of the information services industry -- voice message providers -- it expressly excludes other information services providers, without any explanation. We believe that this restriction stems from Southern Bell's demonstrated unwillingness to facilitate or support innovative service offerings by information services providers that Southern Bell either cannot or chooses not to provide itself. As the Commission observed in its Memory Call Order, Southern Bell's unwillingness to acknowledge its basic obligations under Open Network Architecture standards to make services available to independent information service providers, even in the absence of a comparable Southern Bell offering, calls into serious question Southern Bell's commitment to true competition.

There is no reason, other than Southern Bell's unwillingness, why billing services should not be extended to

Honorable Robert J. Durden
July 15, 1991
Page 3

other information service providers. The demand for such billing services clearly exists. For example, since 1988, Cox has provided and promoted 222-2000, its business referral service. Although we have asked for billing services in connection with 222-2000, Southern Bell has refused.

Southern Bell's filing of this tariff demonstrates that Southern Bell has the capability to provide billing services to the information services industry. The Commission should consider ordering Southern Bell to broaden the scope of the proposed tariff to require provision of billing services to all information service providers.

Southern Bell Has Failed to Justify the Charges for Service

Southern Bell's proposed tariff contains a non-recurring \$3,000.00 service establishment charge as well as a \$.04 per line charge and a "bad debt" deposit requirement. We are concerned that Southern Bell deliberately set these rates at an anti-competitively high level so as to discourage actual use of the tariff by competing voice message providers.

A basic tenet of utility rate regulation is that the price of a service bear some relation to the cost of providing the service. Southern Bell proffers no justification or explanation for its onerous \$3,000 billing service establishment fee, its \$.04 per line fee, nor its deposit requirement. This omission is particularly striking in that Southern Bell is a self-interested voice messaging service provider with a clear incentive to overprice the billing services it provides to its voice messaging competitors.

While Cox cannot subscribe to Southern Bell's proposed tariffed offering because it is limited to voice messaging providers, we believe that Southern Bell's total failure to justify how it arrived at the rates it proposes to charge its competitors is troubling. Southern Bell fails to explain why a \$3,000.00 charge is necessary to open a bill processing account and further, why a separate deposit of up to three months of the voice message provider's anticipated billing is required. These provisions suggest that Southern Bell wishes to set high initial monetary barriers to discourage subscription to its billing service.

Southern Bell's proposed \$.04 per line or portion of line charge has similar anti-competitive overtones. No justification is provided to explain why this charge is appropriate, particularly when it is billed to subscribers who provide Southern Bell with all pertinent billing information that

Honorable Robert J. Durden
July 15, 1991
Page 4

Southern Bell merely loads into its end user bill. The billing services customer is responsible for providing properly rated and formatted bills, ready to be printed. This rate seems far too high in relation to the service rendered, reflecting yet again Southern Bell's desire to stifle its competition.

Southern Bell Continues to Improperly Favor its Memory Call Service

Southern Bell's proposed tariff consistently favors its own voice messaging service. For example, Southern Bell lumps its Memory Call service into its charge for basic telephone service. At the same time, the tariff provides that Southern Bell's competitors' charges will appear on a separate page that identifies the service provider and lists a phone number for billing inquiries. Competitors are prohibited from placing any other information on their billing pages.

Despite a statement in the Tariff Synopsis that Memory Call Service will pay the same rates and charges for Bill Processing Service as its competitors, Southern Bell's proposed tariff continues to ignore all the obvious advantages it retains vis a vis its competitors. Southern Bell's tariff contains all the elements of the unsavory relationship between Southern Bell and Memory Call that the Commission so aptly described in the Memory Call Order.

Under the terms of the tariff, Southern Bell can continue to aggregate its messaging service together with charges for local telephone service. This cannot help but leave the impression that Southern Bell sanctions Memory Call service and only Memory Call service. Further, application of the tariff does nothing to prevent Southern Bell from continuing to promote Memory Call by using bill inserts or information printed directly on the bill. This puts the information services provider in the ironic and unfair position of subsidizing the advertisement and promotion of Memory Call service at the same time that it is prohibited from advertising its own service.

Finally, there is no mechanism available to the Commission or competitors to assure that Southern Bell's Memory Call service is actually paying the same rates and charges as are its competitors. The Commission is already aware of the danger of taking Southern Bell at its word. Cox urges the Commission to require Southern Bell to modify its proposed tariff to expressly place all information service providers on the same footing. This would include the development of an auditing capability to permit the verification of equal treatment of all information services competitors by Southern Bell.

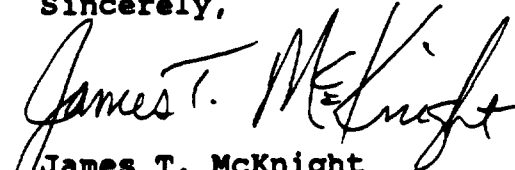
Honorable Robert J. Durden
July 15, 1991
Page 5

Conclusion

In conclusion, we believe that tariffed provision of billing services is a step in the right direction that should be encouraged by the Commission. A billing and collection tariff is long overdue and we do not seek to delay implementation of the tariff at issue. However, the Commission should not permit Southern Bell to set terms, rates and conditions of service which further the unfair advantages Southern Bell has managed to create for its Memory Call service thus far. In order to address these serious competitive issues, the Commission should consider requiring that the tariff be modified to encompass billing service for all information service providers. Further, Southern Bell should be required to demonstrate that its costs to provide billing service are reflected properly in its proposed rates. Finally, Cox submits that the tariff must be reformed to require that Southern Bell halt continuing discriminatory treatment of information service providers.

Thank you for your time and attention.

Sincerely,



James T. McKnight

cc: Honorable Mac Barber, Vice Chairman

Honorable Bobby Pafford
Commissioner

Honorable Bobby Rowan
Commissioner

Honorable Cas M. Robinson
Commissioner

Frank Eldridge
Executive Director

Georgia Public Service Commission

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of July, 1991, copies of the foregoing "Comments of Cox Enterprises, Inc." were served by first class, United States mail, postage prepaid, upon the following parties, except where indicated:

*The Honorable Alfred C. Sikes
Chairman
Federal Communications Commission
Room 814
1919 M Street, N.W.
Washington, D.C. 20554

*The Honorable James C. Quello
Commissioner
Federal Communications Commission
Room 802
1919 M Street, N.W.
Washington, D.C. 20554

*The Honorable Sherrie P. Marshall
Commissioner
Room 826
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

*The Honorable Andrew C. Barrett
Commissioner
Federal Communications Commission
Room 844
1919 M Street, N.W.
Washington, D.C. 20554

*The Honorable Ervin S. Duggan
Commissioner
Room 832
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

*Robert L. Pettit
General Counsel
Federal Communications Commission
Room 614
1919 M Street, N.W.
Washington, D.C. 20554

*Richard Firestone
Chief, Common Carrier Bureau
Federal Communications Commission
Room 500
1919 M Street, N.W.
Washington, D.C. 20554

*Peggy Reitzel
Common Carrier Bureau
Federal Communications Commission
Room 544
1919 M Street, N.W.
Washington, D.C. 20554

William B. Barfield
Thomas T. Rawls II
BellSouth Corporation, Southern Bell Telephone Company
and South Central Bell Telephone Company
1155 Peachtree Street, N.E.
Suite 1800
Atlanta, Georgia 30367-6000

David I. Adelman, Esq.
Roger M. Siegel, Esq.
Attorney General's Office
132 State Judicial Building
Atlanta, Georgia 30344

Honorable Bob Durden, Chairman
Georgia Public Service Commission
224 Washington Street, S.W.
Atlanta, Georgia 30334

Downtown Copy Center
1114 21st Street, N.W.
Suite 140
Washington, D.C. 20037



Saundra Friedman

*Via hand delivery.

STAMP & RETURN

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

AUG - 6 1991

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

BellSouth Corporation Petition
for Emergency Relief and
Declaratory Ruling Preempting
Actions of the Georgia Public
Service Commission

Docket No. 91-757

To: The Commission

REPLY COMMENTS OF COX ENTERPRISES, INC.

Werner K. Hartenberger
Peter C. Canfield
J.G. Harrington

Its Attorneys

Dow, Lohnes & Albertson
1255 23rd Street, N.W.
Suite 500
Washington, D.C. 20037

August 6, 1991

(14)

TABLE OF CONTENTS

	SUMMARY	ii
I.	INTRODUCTION	1
II.	THE RECORD, COMMENTS AND INTERVENING EVENTS COMPEL THE CONCLUSION THAT BELLSOUTH'S INFORMATION SERVICES STRATEGY IS ONE OF MONOPOLY ABUSE	4
	A. The Comments in this Proceeding Cast No Doubt on the Accuracy of the Georgia PSC's Findings that BellSouth Was Abusing Its Monopoly or on the Reasonableness of the Georgia PSC's Response	5
	B. The Record Before the MFJ Court Further Evidences BellSouth's Pattern of Abusive Conduct	9
	C. BellSouth Continues to Attempt to Impede the Growth of the Competitive Enhanced Services Industry	10
III.	THE COMMISSION SHOULD ACT TO PREVENT BELLSOUTH'S CONTINUING ABUSE OF ITS MONOPOLY STATUS	12
	A. The Information Services Decision Heightens the Importance of Regulatory Safeguards Against Telephone Company Monopoly Abuses	12
	B. The Commission Has More than Ample Grounds for Sanctions Against BellSouth	14
IV.	CONCLUSION	17

SUMMARY

This proceeding paints a vivid picture of BellSouth's efforts to cripple a free and competitive market for voice messaging services. In less than a year, competitors have been harmed -- the Georgia PSC concluded "irreparably" -- not by a fair test in the marketplace but by BellSouth's exploitation of its monopoly control of the telephone network. Without proper regulatory control, there exists the real prospect of the elimination of competition in an industry that prior to the telephone company's entry was extremely competitive. Consumers will be the ultimate victims, paying higher prices for fewer choices.

No commenters in this proceeding have disputed the Georgia PSC's findings of actual monopoly abuses. The validity of these findings is reinforced by the facts before the MFJ Court in its information services proceeding. Moreover, the Commission's response is now of heightened importance. The MFJ Court's removal of the information services restriction places much more responsibility on the Commission for regulating telephone company abuses. Meanwhile, BellSouth's pattern of monopoly abuse continues even during the pendency of this proceeding.

Sanctions must be imposed on BellSouth to remedy its violations of the Commission's policies. Finally, this real world experience should compel the Commission to strengthen its regulatory protections of the enhanced services industry.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
BellSouth Corporation Petition)	
for Emergency Relief and)	Docket No. 91-757
Declaratory Ruling Preempting)	
Actions of the Georgia Public)	
Service Commission)	

To: The Commission

REPLY COMMENTS OF COX ENTERPRISES, INC.

Cox Enterprises, Inc. ("Cox"), by its attorneys, respectfully submits the following reply comments in response to BellSouth Corporation's June 14, 1991 Petition for Emergency Relief and Declaratory Ruling Preempting Actions of the Georgia Public Service Commission (the "Petition").^{1/} These reply comments are submitted pursuant to the Commission's June 21, 1991 Public Notice.

I. INTRODUCTION

By its comments, Cox urged the Commission to give close and immediate attention to BellSouth's Petition, not because of its jurisdictional claims, but rather because it brings with it to the Commission a real-world record that demonstrates that current Commission regulation is not adequate to protect competitive markets from the monopoly

^{1/} As in the comments, the Georgia Public Service Commission will be referred to as the "Georgia PSC," and the Georgia PSC's MemoryCall Order, the subject of the Petition, will be referred to as the "Order" in these reply comments.

power of the Bell companies. As Cox recommended in its comments, the Commission should:

- Conclude that the Georgia PSC response was reasonable and, indeed, conservative;
- Impose substantial forfeitures upon BellSouth to deter anticompetitive conduct in the future;
- Withdraw approval of BellSouth's CEI plan for voice messaging services; and
- Strengthen its regulatory regime for the Bell companies' provision of enhanced services.

No one can dispute that the introduction and widespread availability of network-based information services is of national importance and that the Commission should, and properly has, made the facilitation of such services one of its foremost policy goals. Telephone companies have an important role to play in developing these services. Considerable dangers plainly exist, however, when telephone companies expand beyond their traditional common carrier, public utility role to compete directly with the enhanced service providers to whom they provide essential telephone facilities.

This case -- a state commission review of BellSouth's first foray into enhanced services -- provides a graphic illustration of such dangers. It makes clear that BellSouth does not compete in the provision of enhanced services by bringing new and innovative services to the market. What it brings are its old strategies of bottleneck

monopoly abuse -- the very types of abuses that led to the breakup of the Bell system in the 1980s.

The record shows and other parties' comments confirm that, both before and after its entry into the Georgia voice messaging market, BellSouth deliberately delayed and obstructed the efforts of others to offer new voice mail technologies to the consuming public. Once BellSouth was permitted to "compete," it engaged in every monopoly abuse that Cox and other critics have feared, including failure to permit equal access to the local exchange network, unfair exploitation of monopoly marketing channels and predatory pricing. In less than a year, competitors have been harmed -- the Georgia PSC concluded "irreparably" -- and there exists a real prospect of elimination of competition in an industry, here the Georgia voice messaging industry, that prior to the telephone company's entry was, in the Bell companies' phrase, "robust and rapidly expanding." See Regional Companies' Reply Brief, Department of Justice Motion, Civ. Action No. 82-0192, at 2. This will ultimately harm consumers, who will face higher prices, lower quality service and reduced innovation due to the lack of competition.

Nothing in the comments filed with the Commission by other parties casts doubt on the accuracy of the Georgia PSC's findings of actual monopoly abuses, the reasonableness

of the Georgia PSC's response or the need for a further regulatory response by this Commission. Indeed, events subsequent to the initial comment period in this proceeding, including the July 25th MFJ information services decision and BellSouth's own actions in Georgia, heighten the need for Commission action.

II. THE RECORD, COMMENTS AND INTERVENING EVENTS COMPEL
 THE CONCLUSION THAT BELL SOUTH'S INFORMATION
 SERVICES STRATEGY IS ONE OF MONOPOLY ABUSE.

When BellSouth began offering voice messaging service in Georgia through its local operating company, one might have expected the telephone company to exercise unusual sensitivity and restraint. At the time BellSouth initiated its Georgia MemoryCall experiment, Judge Greene was in the process of deciding whether to lift the information services restriction, this Commission was in the midst of its Computer III Remand proceeding and BellSouth had itself previously been publicly criticized for and agreed to halt certain anticompetitive practices in which it had admittedly engaged during its previous rollout of MemoryCall in Florida. Moreover, the Georgia PSC already was wary of the service, having criticized and rejected less than six months earlier certain anticompetitive aspects of the "bidirectional" special calling features tariff on which MemoryCall depended.

Yet BellSouth engaged in every anticompetitive practice that Cox and others had warned of and feared. The Georgia PSC Order at issue in this proceeding documents in detail BellSouth's anticompetitive conduct and the resulting damage to its competitors and the Georgia voice messaging market. As Cox's comments stated, the Order and the record underlying it permit no conclusion other than that this conduct was the product of a calculated and deliberate BellSouth business strategy to cripple competition and set the stage for monopoly profits.

The comments of the other parties to this proceeding cast no doubt upon this conclusion. Indeed, the facts before the MFJ Court, as described in its July 25th decision, and BellSouth's most recent tariff filing in Georgia confirm the scope and nature of BellSouth's anticompetitive actions.

A. The Comments in this Proceeding Cast No Doubt on the Accuracy of the Georgia PSC's Findings that BellSouth Was Abusing Its Monopoly or on the Reasonableness of the Georgia PSC's Response.

One of the most striking aspects of this proceeding is the unanimity with which the commenters agree that BellSouth has abused its monopoly power through its offering of MemoryCall. There is no disagreement on this point.

For instance, both the Association of Telemessaging Services International, Inc. ("ATSI") and CompuServe Incorporated ("CompuServe") concluded that the Georgia PSC had ample reason to apply safeguards to MemoryCall. Comments of ATSI at 11, Comments of CompuServe at 7-8. As CompuServe explained, "It is clear that the Georgia PSC's decision was based upon the PSC's fact-based conclusion that 'SBT's actual behavior in the VMS market during its trial of MemoryCall has been to use its monopoly position to frustrate competition in the VMS market.'" Id. (citation omitted) (emphasis added by CompuServe).

Other commenters reached the same conclusion. The American Newspaper Publishers Association ("ANPA"), MCI Telecommunications Corporation ("MCI"), MessagePhone, Inc., Prodigy Services ("Prodigy") and US Sprint Communications Company Limited Partnership ("US Sprint") all agreed that the Georgia proceeding demonstrated BellSouth's abuse of its monopoly position.^{2/} Comments of ANPA at 4-8, Comments of MCI at 10-11, Comments of MessagePhone, Inc. at 4, n.8. Comments of Prodigy at 6, Comments of US Sprint at 6.

^{2/} The comments further indicate that this abuse is continuing. For instance, ATSI notes that BellSouth continues to promote MemoryCall through mailings to basic service subscribers. When those subscribers try to obtain MemoryCall, they are told it is MemoryCall's voice messaging competitors who have prevented BellSouth from selling the service. Comments of ATSI at 18.

Even the telephone companies filing comments in this proceeding -- Bell Atlantic, NYNEX and Centel -- make no attempt to refute the Georgia PSC's findings of actual BellSouth monopoly abuses. See Comments of Bell Atlantic, Comments of the NYNEX Telephone Companies, Comments of Central Telephone Company. Moreover, although each of these telephone companies glibly calls for complete preemption of the Order by the Commission, none advances any action or method other than self-regulation for bringing these abuses under control. Id.

Not surprisingly, the Georgia PSC concluded that self-regulation was not a credible option. Telephone company commenters notwithstanding, no commenter disputed the need for an effective regulatory response to BellSouth's conduct. Moreover, although a number of commenters questioned certain elements of the Order -- principally, its temporary freeze of MemoryCall and its conclusion that MemoryCall may need to be tariffed in the future -- the fact is that these safeguards, each of which was designed to protect the market and BellSouth's relatively small independent competitors, are a legitimate regulatory

response to the record of actual monopoly abuse with which the Georgia PSC was confronted.^{3/}

As Cox stated in its original comments, and as other commenters have agreed, the record shows that the Georgia PSC's response to BellSouth's record of misconduct was reasonable and, indeed, conservative, and was consciously designed -- in accordance with the Commission's stated objectives -- to promote rather than frustrate competition in the information services market and to ensure

^{3/} The Georgia PSC's decision to order a temporary freeze of MemoryCall was largely the result of substantial evidence that Southern Bell was pricing MemoryCall below cost, coupled with Southern Bell's failure to comply with earlier Georgia PSC orders requiring it to submit cost of service data. Order at 41, 48-49. See also Comments of Georgia PSC at 16, 25 (specifically stating that the freeze is not entry regulation, discussing the temporary nature of the freeze and stating that BellSouth's own actions determine the freeze's duration).

Similarly, with respect to tariffing MemoryCall, the Order does not require tariffs. Instead, it defers the question of the exact form of regulation until Southern Bell provides the cost data needed to conclusively determine whether cross-subsidization and predatory pricing have taken place. Like the temporary freeze, possible tariffing is contemplated by the Order only where necessary to control such abuses and then only for so long as is necessary. Order at 44-46 & nn.23-24. See generally Comments of Georgia PSC at 25 ("[i]t is pure speculation to assume that any particular set of safeguards will be imposed after full study of MemoryCall").

rather than inhibit wider availability of such services to the public.^{4/}

B. The Record Before the MFJ Court Further Evidences BellSouth's Pattern of Abusive Conduct.

The facts in the MFJ proceeding, as described in that Court's recent information services decision, are consistent with the Georgia PSC's findings. United States v. Western Electric Company, No. 82-0192, slip op. (D.D.C., Jul. 25, 1991) ("Information Services Order"). The Court specifically singled out BellSouth as having engaged in anticompetitive behavior in offering voice messaging services. The MFJ Court found that BellSouth had delayed providing features useful in voice messaging until it decided to offer MemoryCall. Id. at 33, n.7. The decision also reveals that BellSouth filed a tariff in Florida that would have raised competitors' costs by as much as 900

4/ See, e.g., Order at 1:

[BellSouth]'s presence..., under conditions where it does not abuse its monopoly position, may actually promote development of an efficient, competitive [enhanced services] market. The central question before the Commission therefore is: What regulatory approach to [BellSouth]'s entry into the [enhanced services] market will best guard against monopoly abuse of that market, but foster its development to its efficient, competitive extremes to the benefit of consumers and the State?

percent. While the tariff was withdrawn in Florida, it remains in effect in other states. Id.

Moreover, with respect to the Bell companies as a group, the Court concluded that:

[T]he Regional Companies have designed technical features in such a way as to render them incompatible with competitors' standard equipment; priced the features in such a manner as to raise their rivals' costs; made important and necessary features available only to their affiliates; and delayed implementation of features requested by competitors until the particular Regional Company was ready to enter the market.

Id., slip op. at 40-41 (footnotes omitted).

Taken together, the Georgia Order and the information services decision underline the persistent and pervasive nature of BellSouth's anticompetitive conduct. Two independent finders of fact now have found a pattern of monopoly abuse throughout BellSouth's operations, ranging from network design to tariffing.

C. BellSouth Continues to Attempt to Impede the Growth of the Competitive Enhanced Services Industry.

Cox's initial comments detailed a variety of BellSouth abusive practices that had been documented outside of the MemoryCall proceeding. Those practices ranged from discrimination and cross-subsidization to attempts to deceive regulators. BellSouth has not ended this pattern of anticompetitive activity. In fact, on the eve of the comment deadline in this proceeding, BellSouth filed new

tariff provisions in Georgia that are designed to impede the growth of the enhanced services industry.^{5/}

These new provisions would increase the originating carrier common line charge for Feature Group B access in Georgia from 0.90 cents per minute to 5.53 cents per minute, more than six times the current charge. Originating CCL charges for Feature Group A, C and D access would remain the same. BellSouth's explanation for this change is that "the relative value of FGB, with its nationwide 7 digit number capability, has increased due to customers utilization of the service for the provision of specialized enhanced services." Southern Bell Georgia CCL Tariff, Synopsis.

But what BellSouth calls "the relative value" of the service is, in fact, a code phrase for the monopoly premium associated with a telephone company bottleneck. The fact that BellSouth proposes a six-fold increase in the price of a service specifically because it is used by the enhanced service industry is a further example of the

^{5/} A copy of this tariff filing is attached to these reply comments as Exhibit 1.

company's efforts to stifle competition in that industry in anticipation of entering it.^{6/}

BellSouth's proposed CCL charges are reminiscent of its efforts to force enhanced service providers to pay special charges under its original CEI plan. BellSouth justified those charges as determined by such factors as market demand and willingness-to-pay studies rather than cost. As Cox detailed in its comments, BellSouth ultimately was forced to amend those provisions of its CEI plan. Memorandum Opinion and Order, BellSouth Plan for Comparably Efficient Interconnection for Voice Messaging Services, 3 FCC Rcd 7284, 7288-290 (1988) ("BellSouth CEI Order"). This strategy is consistent with BellSouth's larger goal, demonstrated in the MemoryCall proceeding, of taking full advantage of its monopoly status not to foster the availability of services to the public but to cripple competition.

III. THE COMMISSION SHOULD ACT TO PREVENT BELL SOUTH'S CONTINUING ABUSE OF ITS MONOPOLY STATUS.

The record compiled in the Georgia proceeding, in the MFJ Court's information services proceeding and in this

^{6/} Even if enhanced service providers are making use of Feature Group B access, the value of Feature Group B access to interexchange carriers has not changed. BellSouth's failure to consider the effect of the increased price on interexchange carriers is further evidence of its intent to stifle enhanced services competition.

proceeding paints a vivid picture of BellSouth's continuing abuse of its monopoly status. Future abuse can be prevented only by a firm and certain response. Moreover, the need for action is heightened by the MFJ Court's information services decision. It is now even more important for the Commission to impose meaningful sanctions on BellSouth, including substantial forfeitures and revocation of the BellSouth voice messaging CEI plan.

A. The Information Services Decision Heightens the Importance of Regulatory Safeguards Against Telephone Company Monopoly Abuses.

The MFJ Court's information services decision underscores the importance of the Commission's response to the record of BellSouth abuse that has been brought before the Commission. The opening of the information services market both multiplies the risks of anticompetitive behavior by BellSouth and the other BOCs^{7/} and increases the regulatory responsibility of the Commission.

^{7/} Even in lifting the restriction, the MFJ Court concluded:

far more probable than the realization of the Regional Companies' claims is the possibility that, once they are allowed to enter the information services market, many of those who now provide such services and which currently make the market so "robust and rapidly expanding" will be driven out of business by anticompetitive strategies which, on the basis of past experience, the Regional Companies will likely adopt. As a consequence, competition in the market will suffer or be extinguished.

Information Services Order at 49-50 (footnotes omitted).

As the Georgia MemoryCall proceeding and the MFJ Court's examination of the BOCs' record of abuse demonstrate, BellSouth and the other BOCs do not hesitate to take advantage of their bottleneck monopolies. If the MFJ Court is no longer in a position to restrain those abuses, then regulators must assume that role. Failure to do so, as the record shows, will result in the collapse of otherwise competitive markets and the creation of new monopolies by the BOCs. Consumers will be the ultimate victims, paying higher prices for fewer choices.

This proceeding provides an opportunity for the Commission to respond to BellSouth's abuses, and to make a clear statement that abuses will not be tolerated. The Commission must act here, where abuses are not only documented but in many cases admitted on the public record, in order to preserve both competition and its role as the protector of the public interest.

**B. The Commission Has More than Ample Grounds
for Sanctions Against BellSouth.**

Cox's comments documented the need for sanctions against BellSouth's anticompetitive actions in Georgia. The information services decision, the comments of other parties and BellSouth's own recent tariff filing demonstrate the continuing need for action to prevent BellSouth from engaging in further monopoly abuse in voice messaging and

other enhanced services. Consequently, revocation of Commission approval of BellSouth's voice messaging CEI plan and substantial forfeitures for violations of Commission rules and policies clearly are warranted. See, e.g., Comments of ANPA at 10.

As detailed in Cox's comments, revocation of Commission approval of the CEI plan is warranted because of BellSouth's continuing failure to provide the "equal and efficient access" to basic services required by the Commission. BellSouth CEI Order, 3 FCC Rcd at 7284. BellSouth's exploitation of its bottleneck monopoly, detailed in Cox's comments, the MFJ Court's order and herein, fully justifies revocation.

BellSouth's most recent act, filing a tariff designed to discriminate against enhanced service providers, see Part II(C), supra, shows that it has failed to learn even the most basic lessons in achieving "fairness and efficiency for all enhanced service providers." BellSouth CEI Order, 3 FCC Rcd at 7284. This provides further justification for revocation of the CEI plan and a full investigation as to whether a suitable CEI plan for BellSouth can be devised.^{8/} See Comments of Cox at 35-36.

^{8/} Of course, absent an approved CEI plan, BellSouth may not offer MemoryCall or any other voice messaging service in Georgia or anywhere else within its service area. BellSouth CEI Order, 3 FCC Rcd at 7284.